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EX PARTE OR LATE FILED

June 19, 1995

## VIA HAND DELIVERY

Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M. Street, N.W.  
Washington, DC 20554

## EX PARTE FILING

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**Re: In the Matter of Market Entry and Regulation of  
Foreign-Affiliated Entities  
IB Docket No. 95-22**

Dear Mr. Caton:

Alfred Mamlet and Stewart Baker, on behalf of Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD"), met today with David Solomon, John Berresford, Margie Bertman and Susan O'Connell regarding the above-captioned matter.

We shared the attached presentation, which summarizes our jurisdictional concerns regarding the Commission's proposed market-access test for foreign-affiliated carriers. These concerns are presented more fully in the comments and reply comments that we have submitted in this proceeding.<sup>1/</sup>

Respectfully Submitted,



Alfred M. Mamlet  
Counsel for Telefónica Larga Distancia  
de Puerto Rico, Inc.

/srh-m

Enclosures

cc: David Solomon  
John Berresford  
Margie Bertman  
Susan O'Connell

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<sup>1/</sup> See Comments of Telefónica Larga Distancia De Puerto Rico, Inc. ("TLD") (April 11, 1995); Reply Comments of TLD (May 12, 1995).



# **JURISDICTIONAL ISSUES RAISED BY FOREIGN AFFILIATED-CARRIER NPRM**



## **NPRM PROPOSES TO EMBROIL FCC IN TRADE POLICY**

- **NPRM PROPOSES NEW STANDARD "TO ENCOURAGE FOREIGN GOVERNMENTS TO OPEN THEIR COMMUNICATIONS MARKETS"**
- **NEW ENTRY STANDARD FOR IMTS RESALE OR UNAFFILIATED ROUTES COULD ONLY BE JUSTIFIED ON TRADE BASIS**
- **DOUBLE STANDARD COULD ONLY ARGUABLY BE JUSTIFIED ON TRADE BASIS**



# **CONSTITUTIONAL CONSIDERATIONS**

- **EXECUTIVE BRANCH HAS EXCLUSIVE POWER IN FOREIGN AFFAIRS AND TRADE MATTERS**
- **EXECUTIVE BRANCH HAS EXCLUSIVE POWER TO NEGOTIATE INTERNATIONAL AGREEMENTS**
- **FCC ACTION COULD INTERFERE WITH EXECUTIVE BRANCH GATS NEGOTIATIONS OR OTHER FOREIGN AFFAIRS CONSIDERATIONS**



## **EXECUTIVE BRANCH HAS STATUTORY AUTHORITY FOR TELECOM TRADE**

- **SECTION 301**

- ▶ VESTS AUTHORITY WITH USTR
- ▶ MANDATES STANDARDS AND PROCEDURES DIFFERENT THAN NPRM

- **TELECOM TRADE ACT OF 1988**

- ▶ VESTS AUTHORITY WITH USTR
- ▶ AUTHORIZES USTR TO IMPOSE RECIPROCITY MEASURES
- ▶ LIMITS FCC ROLE TO DATA COLLECTION AND STUDY
- ▶ CONFERENCE REPORT CAUTIONS THAT THIS FCC ROLES DOES NOT MEAN "THAT THE FCC HAS ANY LEGAL AUTHORITY TO FORMULATE TRADE POLICY."



## **NO STATUTORY BASIS FOR FCC JURISDICTION OVER TRADE UNDER SECTION 214**

- **CONGRESS AUTHORIZED LIMITED CONSIDERATION OF RECIPROCITY UNDER SECTIONS 35, 308(C), 310(C)**
- **CONGRESS RECENTLY REJECTED BILL TO GIVE FCC AUTHORITY TO CONSIDER RECIPROCITY UNDER 214**
- **CONGRESS MAY GIVE FCC AUTHORITY TO CONSIDER RECIPROCITY UNDER SECTION 310(B), BUT NOT SECTION 214**



## **FCC AND EXECUTIVE BRANCH HAVE PREVIOUSLY CONCLUDED FCC LACKS AUTHORITY TO CONSIDER RECIPROCITY**

- **1980 CABLE DECISION ACKNOWLEDGED LACK OF JURISDICTION**
- **1987 NPRM REJECTED PROPOSED APPROACH**
- **1987 AND 1988 EXECUTIVE BRANCH COMMENTS STRONGLY OPPOSED FCC CONSIDERATION OF RECIPROCITY**
- **1995 EXECUTIVE BRANCH COMMENTS WOULD REQUIRE "GREAT DEFERENCE," AMOUNTING TO RUBBER STAMP IN VIOLATION OF APA**



## **NEITHER NPRM NOR SUPPORTERS OF PROPOSED RULE HAVE PROVIDED JURISDICTIONAL BASIS**

- **AMERICATEL** - REJECTED RECIPROCITY TEST AND CONSIDERED SAFEGUARDS IN LIGHT OF LIBERALIZATION
- **INTERNATIONAL RESALE** - GOAL WAS TO PROTECT US CONSUMERS, AND TEST APPLIES EQUALLY TO APPLICATIONS OF FOREIGN AND US COMPANIES
- **INTERNATIONAL COMPETITIVE CARRIER POLICIES** - REQUIRED OPERATING AGREEMENTS TO PROTECT COMPETITION, BUT STATED "WE ARE NOT EQUIPPED, HOWEVER, TO CONSIDER THE DOMESTIC MARKETS OF FOREIGN COUNTRIES."





## **CONCLUSIONS**

- **FCC DOES NOT HAVE JURISDICTION TO CONSIDER RECIPROCITY**
- **NO NEW ENTRY STANDARD FOR DOMESTIC SERVICE OR IMTS RESALE**
- **NO NEW ENTRY STANDARD FOR UNAFFILIATED ROUTES**
- **FCC HAS JURISDICTION TO IMPOSE REASONABLE COMPETITIVE SAFEGUARDS ON AFFILIATED ROUTES**